BILL NO. Z-73-09-10

ZONING MAP ORDINANCE NO. Z-Rush

AN ORDINANCE amending amending the City of Fort Wayne Zoning Map No. FF1 & GG1 by locating a Shopping Center Symbol thereon.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. A Regional Shopping Center (B-2) Symbol is hereby located at the intersection of Illinois Road and State Road #14 under the terms of Chapter 36, Municipal Code of the City of Fort Wayne, Indiana, 1946, as amended by General Ordinance No. 2836 and amendments thereof; and the symbols of the City of Fort Wayne Zoning Map No. FF1 & GG1, referred to therein, established by Section 9, Article III of said Chapter as amended, is hereby amended accordingly.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor and legal publication thereof.

John Nuckols
Councilman

APPROVED AS TO FORM
AND LEGALITY,
CITY ATTORNEY

Read the first time in full and on motion by Nuckols, seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) ~~and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on~~ _____, the _____ day of _____, 197_____, at _____ o'clock P.M.,E.S.T.

Date: 9-16-73

CITY CLERK

Read the third time in full and on motion by Kraus, seconded by V. Schmidt, and duly adopted, placed on its passage. ~~Passed~~ (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
	3	5	1	to-wit:
BURNS	✓			
HINGA			✓	
KRAUS		✓		
MOSES	✓			
NUCKOLS	✓			
SCHMIDT, D.		✓		
SCHMIDT, V.		✓		
STIER		✓		
TALARICO		✓		

DATE: 2-26-74

CITY CLERK

Passed and ~~adopted~~ by the Common Council of the City of Fort Wayne, Indiana, as ~~(Zoning Map)~~ ~~(General)~~ ~~(Annexation)~~ ~~(Special)~~ ~~(Appropriation)~~ Ordinance ~~(Resolution)~~ No. _____ on the _____ day of _____, 197___.

ATTEST: (SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 197_____, at the hour of _____ o'clock _____ M.,E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 197____, at the hour of _____ o'clock _____ M.,E.S.T.

MAYOR

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M.,E.S.T.

Date: _____ _____
CITY CLERK

motion was made by Kraus to pass Bill #
2-73-09-10 into the Committee of the Whole seconded by V. Schmidt
~~Read the third time in full and on motion by~~ _____,
seconded by _____, ~~and duly adopted, placed on its passage.~~
Passed (~~LOST~~) by the following vote:
by the following vote

	AYES 5,	NAYS 4,	ABSTAINED _____,	ABSENT _____ to-wit:
BURNS		✓		
HINGA		✓		
KRAUS	✓			
MOSES		✓		
NUCKOLS		✓		
SCHMIDT, D.	✓			
SCHMIDT, V.	✓			
STIER	✓			
TALARICO	✓			

DATE: _____ _____
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No._____ on the _____day of _____, 197___.

ATTEST: (SEAL)

_____ _____ _____
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of_____, 197_____, at the hour of_____o'clock _____M.,E.S.T.

_____
CITY CLERK

Approved and signed by me this _____day of _____, 197____, at the hour of_____ o'clock _____M.,E.S.T.

_____
MAYOR

RESOLUTION ON ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on September 11, 1973, referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-73-09-10; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on November 19, 1973;

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that such proposed ordinance DO PASS for the reasons that a need has been shown for the Land Use Plan to be amended, the amendment will be in the best interest of and benefit to the area involved and of and to the city, and the amendment will not be detrimental to and does not conflict with the overall city plan;

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held November 26, 1973.

Gretchen Wiegel

Certified and signed this
27th day of November, 1973.

Gretchen Wiegel
Secretary

Hold
Feb. 12.

Hold

Bill No. Z-73-09-10

REPORT OF THE COMMITTEE ON REGULATIONS

We, your Committee on Regulations to whom was referred an Ordinance amending the City of Fort Wayne Zoning Map No. FF1 & GG1 by locating a Shopping Center Symbol thereon.

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance _____ PASS.

John Nuckols - Chairman

Vivian G. Schmidt - Vice-Chairman

William T. Hinga

Paul M. Burns

Donald J. Schmidt

Prescribed by State Board of Accounts

A.E. BOYCE CO., MUNCIE, IND. GENERAL FORM NO. 352

RECEIPT

GENERAL FUND

No 217

FT. WAYNE, IND. Aug 15 1973

RECEIVED FROM Indiana 14 Venture $50.00

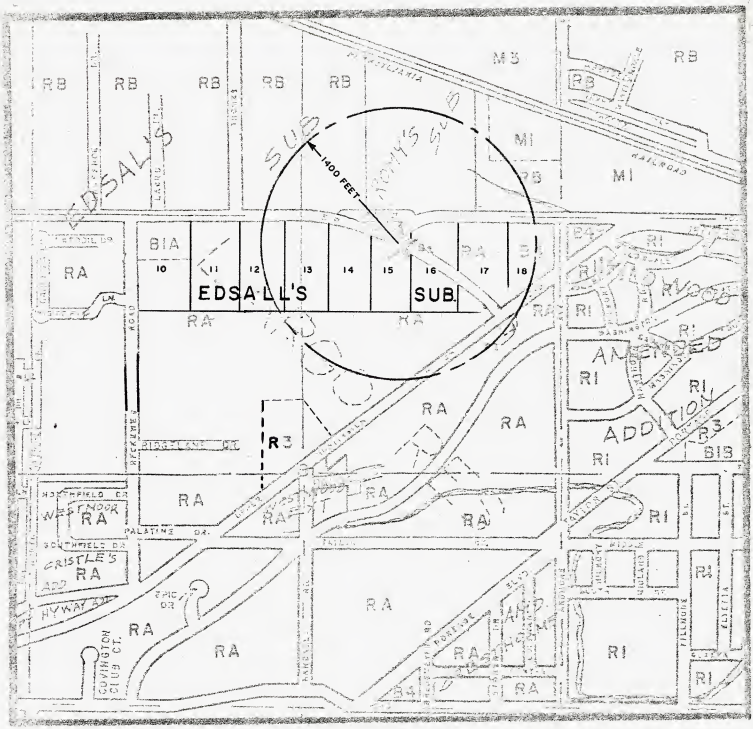
THE SUM OF Fifty dollars — 00/100 DOLLARS

ON ACCOUNT OF Rezone

ck # 112
Dated 8/15/73

N. Hartman

AUTHORIZED SIGNATURE



ESTABLISH A B_2 SHOPPING CENTER SYMBOL

Z-73-09-10

PAGE NO. FF1 & GG1

DATE: 8-15-73

Hold
12/18/73

CITY OF FORT WAYNE
910 LINCOLN BANK TOWER
FORT WAYNE, INDIANA 46802

JOHN H. LOGAN
COMMON COUNCIL ATTORNEY
AND RESEARCH ANALYST

December 10, 1973

Mr.John Nuckols, Chairman
Regulations Committee
Common Council for City of Fort Wayne
One Main Street
Fort Wayne, Indiana 46802

Mr. Charles Westerman, City Clerk
One Main Street
Fort Wayne, Indiana 46802

Re: Ordinance Z-73-09-10

Gentlemen:

It is my understanding that Mr. Jack Lawson of the law firm of Dunten, Beckman, Wyneken, Lawson & Fruechtenicht, represents one of the interested parties, either for or against (I do not know) in the above captioned Ordinance. He desires to file briefs with the City Council. This would require extensive study as my understanding of the legal questions raised in the Brief are substantial.

Therefore, I ask that no action be taken by the Common Council on the matter tomorrow night for the following reasons:

(a) I find it impossible to be present at the Common Council meeting tomorrow night;

(b) I desire to analyze the Briefs which Mr. Lawson will present so that I can adequately advise the Common Council the legal aspects of this matter before further action is taken.

Yours very truly,

John H. Logan

JOHN H. LOGAN
jhl/bm

FORT WAYNE, IND.
RECEIVED
DEC 1 1 1973
CHARLES W. WESTERMAN
CITY CLERK

PETITION FOR ZONING ORDINANCE AMENDMENT

Receipt No. _____

TO: COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA

Date Filed August 15, 1973

Intended Use _____

I/We H. Duane Bobeck and Fred W. Garver, tenants in common - Owners ~~John D. Reynolds and Alyce M. Reynolds, husband & wife - Owners~~ Raymond E. Overlander and Donna M. Overlander, husband & wife - Owners
~~(Applicant's Name or Names)~~
do hereby petition your Honorable Body to amend the Zoning Map of Fort Wayne, Indiana, by reclassifying from an ~~an~~ RA District to an ~~an~~ Shopping Center Symbol "B"* District the property described as follows:

(1) Lot Number 13 in Edsall's Subdivision of LaGro Reserve in Township 30 North of Range 12 East, as per plat recorded in deed record 30, page 160 in the office of the Recorder of Allen County, Indiana, excepting therefrom all legal roads and highways.

(2) Part of lot number 12 in Samuel Edsall's Subdivision in LaGro Reserve in Township 30 North, Range 12 East, Allen County, Indiana, as recorded in Deed Record 30, page 160 and 161 in the office of the Recorder, and more particularly described as follows: the West Half of lot numbered 12 in Edsall's Subdivision EXCEPTING therefrom the North 75 feet and EXCEPTING therefrom the North 366 feet of the West 120 feet; containing 3.82 acres of land, more or less, and being subject to an easement for roadway purposes over the West 25 feet of the North 366 feet remaining.

(3) The East 1/2 of Lot number 12 in Edsall's Subdivision of LaGro Reserve in Township 30 North, Range 12 East, except that part thereof conveyed for highway purposes.

(Legal Description)

*PETITIONERS DESIRE TO ESTABLISH A SHOPPING CENTER SYMBOL "B2" AT THE INTERSECTION OF WEST ILLINOIS ROAD AND STATE ROAD 14, FORT WAYNE, ALLEN COUNTY, INDIANA.

(General Description for Planning Staff Use Only)

I/We, the undersigned, certify that I am/We are the owner(s) of fifty-one percentum (51%) or more of the property described in this petition.

H. Duane Bobeck	2412 Fort Wayne Bank Bldg. Fort Wayne, Indiana	H Duane Bobeck
Fred W. Garver	2412 Fort Wayne Bank Bldg. Fort Wayne, Indiana	Fred W Garver
John D. Reynolds	703 Nordale Drive Fort Wayne, Indiana	John D Reynolds
Alyce M. Reynolds	703 Nordale Drive Fort Wayne, Indiana	Alyce M. Reynolds
Raymond E. Overland	R.1, Box 169F, Roanoke	Raymond E. Overlander
Donna M. Overlander	R.1, Box 169F, Roanoke	Donna M. Overlander

Legal Description Checked By: _____

(City Engineer)

NOTE FOLLOWING RULES:

All requests for continuances or requests that ordinances be taken under advisement shall be filed in writing in the Office of the City Plan Commission by noon on the Wednesday preceding the meeting of the City Plan Commission at which the ordinance is to be considered. If the request for a continuance or advisement is filed within the required time, the matter will not be put on the agenda for that meeting. It shall be the obligation of the petitioner to notify the same property owners which the Plan Commission had notified by mail that the hearing has been postponed or rescheduled and inform them of the time and place of the meeting at which the ordinance will be considered. All withdrawals of ordinances must be made in writing prior to the Plan Commission's vote on the ordinance.

Name and address of preparer, attorney or agent:

H. Duane Bobeck	2412 Fort Wayne Bank Bldg. Fort Wayne, Indiana	219 422-7444
(Name)	*(Address)*	*(Telephone Number)*

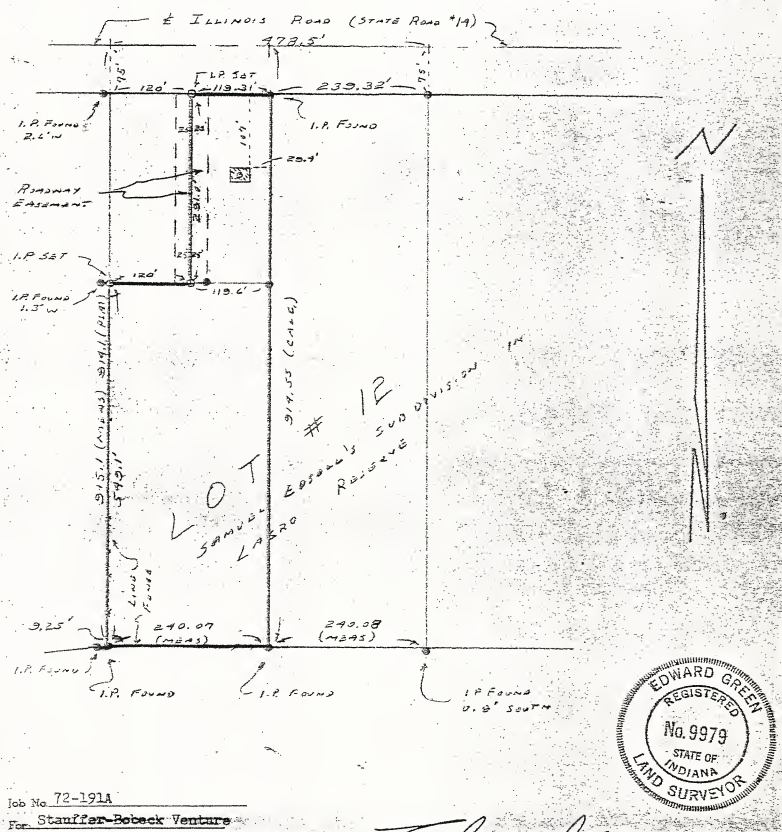
City Plan Commission, City-County Building, Room 800, One Main Street, Fort Wayne, Indiana 46802 Telephone Number 423-7571

CERTIFICATE OF SURVEY

Office of GREEN-GOTTSCHALK ASSOCIATES
LAND SURVEYOR & CIVIL ENGINEERS
FORT WAYNE, INDIANA

The undersigned Land Surveyor, registered as provided by Acts of the General Assembly of the State of Indiana, hereby certifies that he has made a resurvey of the real estate depicted and described below. Measurements were made in feet and decimals and the corners were perpetuated as shown, in conformity with the plat and deed record thereof in the office of the Recorder of Allen County, Indiana. No encroachment existed, except as noted. The description of the real estate is as follows, to wit:

Part of lot number 12 in Samuel Edsall's Subdivision in Lagro Reserve in Township 30 North, Range 12 East, Allen County, Indiana, as recorded in Deed Record 30, pages 160 and 161 in the office of the Recorder, and more particularly described as follows; the West Half of lot numbered 12 in Edsall's Subdivision EXCEPTING therefrom the North 75 feet and EXCEPTING therfrom the North 366 feet of the West 120 feet; containing 3.82 acre of land, more or less, and being subject to an easement for roadway purposes over the West 25 feet of the North 366 feet remaining.



EDWARD GREEN
REGISTERED
No. 9979
STATE OF INDIANA
LAND SURVEYOR

Job No. 72-191A

For Stauffer-Boback Venture

IN WITNESS WHEREOF, I hereunto place my hand and seal this 27 day of September 1972

Edward Green

STATE OF INDIANA)
) SS: BEFORE THE FORT WAYNE CITY COUNCIL
COUNTY OF ALLEN)

Proxy
lack of
quorum
conflict of
interest

IN RE THE MATTER OF BILL NO. Z-73-09-10)
)
TO ESTABLISH A SHOPPING CENTER SYMBOL (B-2))
)
AT THE INTERSECTION OF WEST ILLINOIS ROAD)
)
AND STATE ROAD 14)

Comes now Jack W. Lawson, Attorney at Law, and Stanley A. Levine, Attorney at Law, and appears for remonstrators Wildwood Park Community Association, Inc., Stanley and Clauda Levine, Thomas N. Beadie, Mr. and Mrs. Edward Downing, et al., and on behalf of that class of persons so similarly situated and adversely affected by the above proposed rezoning petition for the ordinance to establish at said shopping center symbol, and files the attached brief on behalf of said remonstrators.

FORT WAYNE, IND.
FILED
DEC 11 1973
CHARLES W. WESTERMAN
CITY CLERK

FORT WAYNE, IND.
RECEIVED
DEC 11 1973
CHARLES W. WESTERMAN
CITY CLERK

DUNTEN, BECKMAN, WYNEKEN, LAWSON
& FRUECHTENICHT

BY: Jack W. Lawson
Jack W. Lawson
2410 Fort Wayne Bank Building
Fort Wayne, Indiana 46802
(219) 423-1602

BY: Stanley A. Levine
Stanley A. Levine
344 Utility Building
Fort Wayne, Indiana 46802
(219) 423-3525

All documents and remonstrances filed under Bill No. Z-73-09-10 and Bill No Z-73-06-14 are incorporated herein by reference and made a part hereof as though fully set forth herein.

I. THE HEARING HELD ON ZONING MAP AMENDMENT NO. Z-73-09-10 BY THE FORT WAYNE PLAN COMMISSION ON NOVEMBER 19, 1973, WAS NOT AN OFFICIAL HEARING FOR THE REASON AT THE TIME THE ARGUMENTS AND PRESENTATIONS ON THIS PARTICULAR MATTER WERE MADE THERE WAS NOT A QUORUM OF THE PLAN COMMISSION PRESENT THEREBY INVALIDATING ANY ACTION TAKEN BY THE PLAN COMMISSION.

Burns Ind. Stat. Anno. §53-719 states a majority of the Plan Commission shall be necessary for a quorum. Without a quorum present at a given meeting, the Plan Commission is powerless to take any action whatsoever. The minutes of the November 19, 1973 meeting of the Plan Commission indicate at the time roll was called a quorum was present. However, prior to the hearing on Bill No. Z-73-09-10, The Chairman, Mr. Grinsfelder, disqualified himself and members Nuckols and Boswell left the meeting.

After these departures and The Chairman's disqualification, there was not a quorum of the Plan Commission left at the meeting. Although still present, Mr. Grinsfelder cannot be considered present for the purpose of determining whether a quorum existed for this particular bill.

Burns Ind. Stat. Anno. §53-701 states:

***

"No member of the Plan Commission, Board of Zoning Appeals, City Council or Board of County Commissioners shall participate in the hearing or decision of such Commission, Board or Council upon any zoning matter, other than the preparation and enactment of an overall or comprehensive plan, in which he is directly or indirectly interested in the financial sense. In the event of such disqualification, such facts shall be entered on the records of the Commission, Board, or Council, and the remaining members of the Commission, Board, or Council shall choose an elector to act as a member of such Commission, Board, or Council in the hearing and determination of the particular matter of matters in which the disqualification occurs."

The statute leaves no doubt that Chairman Grinsfelder, in the eyes of the law, was not present at the hearing on Bill No. Z-73-09-10. Disqualification does not apply to only a decision

but also, participation in a hearing. The statute further requires, by the use of the mandatory word "shall", appointment by the remaining members of the Commission of an elector, to act in the particular case where disqualification has occurred. The minutes clearly indicate Mr. Grinsfelder continued to chair the meeting and the Plan Commission failed to appoint an elector as required by statute. The act of Mr. Grinsfelder and the failure to act by the Plan Commission clearly contravenes the dictates of Burns Ind. Stat. Anno. §53-701.

The minutes of the November 26, 1973 Executive Meeting of the Plan Commission indicate that not only did Mr. Grinsfelder continue to chair the public hearing, held on November 19, 1973, but he also acted as chairman at the Executive Meeting held November 26, 1973. The minutes of the Executive Meeting are conclusive of the fact no elector was appointed by the Plan Commission to vote in Mr. Grinsfelder's stead. Again, because of the mandatory language of Burns Ind. Stat. Anno. §53-701, any action taken by the Plan Commission at the November 26, 1973 Executive Meeting on Bill No. Z-73-09-10 was invalid as a result of Mr. Grinsfelder continuing to chair the meeting and the failure of the Plan Commission to appoint an elector to vote in his place.

II. THE VOTE OF THE PLAN COMMISSION ON BILL NO. Z-73-09-10 AT ITS NOVEMBER 26, 1973 EXECUTIVE MEETING WAS INVALID BY REASON OF THE GRANTING OF A PROXY BY JOHN NUCKOLS TO WILLIAM HINGA AND THE RECOGNITION OF THAT PROXY BY THE PLAN COMMISSION, ALLOWING MR. HINGA TO CAST A VOTE.

Burns Ind. Stat. Anno. §53-707 directs City Council to appoint one of its members to serve on the Plan Commission. The statute further states, "The term of the appointed member shall be co-extensive with the term of office to which he has been elected or appointed, unless the Council or Board, on its first regular

meeting of each year, appoints another to serve as its representative." Interpretation of this using the ordinary meaning of the words, means once a City Council member is appointed to the Plan Commission this appointment cannot be changed, except by City Council at its first yearly meeting. No power is given to the City Council member to change the appointment or send someone in his stead. If he is not there, he is absent. The statute has not conferred proxy giving power on him.

By allowing Mr. Hinga to vote on Bill No. Z-73-09-10 at its November 26, 1973 meeting the Plan Commission has invalidated any action it took on that bill at its Executive Meeting.

CONCLUSION

The action taken by the Fort Wayne Plan Commission at its November 19, 1973 public hearing is invalid for the following reasons: 1) No quorum was present as required by Burns Ind. Stat. Anno. §53-719; 2) Mr. Grinsfelder continued to participate in the hearing after indicating an indirect financial interest in violation of Burns Ind. Stat. Anno. §53-701; 3) The Plan Commission failed to appoint an elector to replace Mr. Grinsfelder upon his disqualification in violation of Burns Ind. Stat. Anno. §53-701.

The action taken by the Fort Wayne Plan Commission at its November 26, 1973 Executive Meeting is invalid for the following reasons: 1) Mr. Grinsfelder continued to participate in the decision-making process in violation of Burns Ind. Stat. Anno. §53-701; 2) The Plan Commission failed to appoint an elector to fill Mr. Grinsfelder's position after he had indicated an indirect financial interest in violation of Burns Ind. Stat. Anno. §53-701; 3) The Plan Commission recognized the proxy given Mr. Hinga by Mr. Nuckols and allowed Mr. Hinga to vote on Bill No. Z-73-09-10 in violation of Burns Ind. Stat. Anno. §53-707.

90 Day Rule

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE THE CITY PLAN COMMISSION
CITY OF FORT WAYNE

IN RE THE MATTER OF BILL NO. Z-73-09-10 TO ESTABLISH A SHOPPING CENTER SYMBOL (B-2) AT THE INTERSECTION OF WEST ILLINOIS ROAD AND STATE ROAD 14

Comes now Jack W. Lawson, Attorney at Law, and appears for remonstrators, Stanley and Claudia Levine, Thomas N. Beadie, Mr. and Mrs. Edward Downing, et al., and on behalf of that class of persons so similarly situated and adversely affected by the above-proposed rezoning petition for the ordinance to establish said shopping center symbol, and files the attached brief on behalf of said remonstrators.

DUNTEN, BECKMAN, WYNEKEN, LAWSON
& FRUECHTENICHT

BY: _____
(Jack W. Lawson)
2410 Fort Wayne Bank Building
Fort Wayne, Indiana 46802
Phone: 423-1602

FORT WAYNE, IND.
RECEIVED
DEC 11 1973
CHARLES W. WESTERMAN
CITY CLERK

FORT WAYNE, IND.
FILED
DEC 11 1973
CHARLES W. WESTERMAN
CITY CLERK

I. FAILURE OF THE CITY COUNCIL OF FORT WAYNE TO PASS BILL NO. Z-73-06-14 WITHIN 90 DAYS OF THE REJECTION OF THAT BILL BY THE PLAN COMMISSION CONSTITUTES A REJECTION OF THE BILL AND IT CANNOT BE RECONSIDERED BY THE PLAN COMMISSION FOR ONE YEAR SUBSEQUENT TO THAT REJECTION.

The Indiana Legislature has made the procedure for amending master zoning plans explicit. The legislature specifically set forth the procedure to be followed if a proposed amendment is rejected by the Plan Commission.

> "Procedure in amending, supplementing and changing--Vote required where commission is adverse. Amendments, supplements or changes of the regulations of the zoning ordinance shall be considered as amendments to the master plan. Any proposed ordinance for the amendment, supplement, change or repeal of the zoning ordinance not originating from petition of the plan commission shall be referred to the plan commission for consideration and report before any final action is taken by the city council or the board of county commissioners.
>
> Prior to the submission to the city council or the board of county commissioners of a plan commission petition or a report on a proposed ordinance referred to it for an amendment, supplement, change or repeal of the zoning ordinance the plan commission shall give notice and hold a public hearing in the manner prescribed for adoption of a master plan in section 37 (§53-737) of this act.
>
> In the event the report of the plan commission is adverse to a proposed ordinance referred to it, the ordinance shall not be passed except by an affirmative vote of at least seventy-five per centum (75%) of the members of the city council or a unanimous affirmative vote of the board of county commissioners.
>
> Failure of the city council or the board of county commissioners to pass such proposed ordinance by said affirmative vote within ninety (90) days after its rejection by the plan commission shall constitute rejection of the proposed ordinance and it shall not be reconsidered by the planning commission, city council or county commissioners until the expiration of one (1) year after the date of its original rejection by the plan commission. (Acts 1947, ch. 174 § 64, p. 571; 1961, ch. 133 § 1, p. 288.)" Burns Ind. Stats. Anno. §53-765.

The above quoted Statute applies specifically to the situation present in the action now before the Plan Commission. On July 23, 1973, the Fort Wayne Plan Commission rejected a proposed amendment

to the Master Zoning Plan denoted as Bill No. Z-73-06-14. A copy of the minutes from that meeting are attached hereto, made a part hereof and marked Exhibit "A". Burns Ind. Stats. Anno. §53-765 requires that the City Council pass this ordinance by a 75% majority within 90 days. October 23, 1973, was the final date for passage. The minutes of City Council indicate that at no time prior to October 23, 1973, was Bill No. Z-73-06-14 passed by that Council.

The operation of the Statute on October 23, 1973, is automatic. On that date the proposed ordinance was rejected by the Fort Wayne City Council. The only way this rejection could have been avoided is by an affirmative vote by a 75% majority of the Council, enacting the ordinance. The Statute operates further to prohibit the reconsideration of the ordinance by the Plan Commission for one year after its rejection. The year will expire July 23, 1974.

Burns Ind. Stats. Anno. §53-765 is a mandatory Statute. When the facts of a situation coincide with those stated in the Statute the Plan Commission has no discretion to invoke or not invoke the Statute. The word "shall" has long been held to be mandatory, not discretionary. The legislature has made it clear that the Fort Wayne Plan Commission is without jurisdiction to hear or rule on Bill No. Z-73-09-10 which is identical to Bill No. Z-73-06-14, as will be shown later.

II. BILLS NOS. Z-73-06-14 AND Z-73-09-10 ARE IDENTICAL FOR THE REASON THEY BOTH APPLY FOR ESTABLISHMENT OF A "B2" REGIONAL SHOPPING CENTER STAR AT THE INTERSECTION OF STATE ROAD 14 AND ILLINOIS ROAD.

As is indicated by the maps filed with Bills No. Z-73-06-14 and Z-73-09-10, the land in question is identical. Map Z-73-06-14 is attached hereto, made a part hereof and marked Exhibit "B". Map Z-73-09-10 is attached hereto, made a part hereof and marked Exhibit "C". To further heighten this identity, the "stars"

indicated on each map as the center of the "B2" zone are placed at the intersection of State Road 14 and Illinois Road. Even if the land description were not the same in each bill, the identical placement of the "star" makes Z-73-06-14 and Z-73-09-10 the same bill.

The mere fact that a petition to rezone (proposed amendment to a Master Zoning Plan) is filed under a different petition number and at a different time than another identical petition to rezone, cannot obviate the operation of Burns Ind. Stats. Anno. §53-765. If the latter petition is in fact identical to the former which was rejected by the Plan Commission and not passed by City Council, the Plan Commission cannot consider the latter for one year after the rejection of the former.

Attached hereto and made a part hereof are Exhibits "D" and "E", petitions filed as Bills Nos. Z-73-06-14 and Z-73-09-10, respectively. As is indicated on the face of these petitions they are identical, removing further any doubt of the application of Burns Ind. Stats. Anno. §53-765.

III. A PETITION TO REZONE (PROPOSED AMENDMENT TO THE MASTER PLAN) CANNOT BE WITHDRAWN FROM CITY COUNCIL AFTER THE PLAN COMMISSION HAS VOTED ON THE ORDINANCE.

On August 14, 1973, the Committee on regulations requested of City Council, leave to withdraw Bill No. Z-73-06-14. It is not indicated in the minutes of City Council whether this request was granted. The request made by the Committee on Regulations can only be considered surplusage. Petition for rezoning (Bill No. Z-73-06-14) filed by proponents Reynolds, et al. indicates on its face, "All withdrawals of ordinances must be made in writing prior to the Plan Commission's vote on the ordinance". See Exhibits "D" and "E". When proponents Reynolds, et al. filed their petition, they incorporated the above quoted phrase into their petition. Proponents cannot assert that that phrase shall not apply

to them.

Neither can the Plan Commission abrogate the rules of City Council. City Council has seen fit to specifically mention this rule in the form provided for rezoning petitions. It would not be mentioned in the form if it were not the intention of City Council to enforce it.

Burns Ind. Stats. Anno. §53-765 further reinforces the rule of City Council. The Statute requires City Council to either accept the recommendation of the Plan Commission or override its recommendation by 75% majority. These are the only two alternatives open to City Council. The Council cannot, on motion or request of anyone, allow the petition to rezone to be withdrawn.

The attempted withdrawal of Z-73-06-14 is ineffective and cannot be allowed to stand. City Council cannot make an exception to or disregard its own rules.

CONCLUSION

Bills Nos. Z-73-06-14 and Z-73-09-10 are identical. Since Z-73-06-14 was rejected by the Plan Commission and not passed by City Council within 90 days, it is considered rejected and cannot be heard by the Plan Commission for another year. The attempted withdrawal of Z-73-06-14 is mere surplusage. Under Burns Ind. Stats. Anno. §53-765 and City Council rules, the bill could not be withdrawn after its rejection by the Plan Commission. The Fort Wayne Plan Commission has no jurisdiction to hear Bill No. Z-73-09-10 until after July 23, 1974.

DUNTEN, BECKMAN, WYNEKEN, LAWSON
& FRUECHTENICHT

BY: _____
(Jack W. Lawson)

f. Bill No. Z-73-05-20 - From "R1" to "R3" - The west 82 feet of the south 270 feet of Lot # 3 in J. H. Feichter's Gardenview Addition, generally located on the north side of Lake Avenue approximately 240 feet west of Hobson Road.

Following presentation and discussion of the Committee Report, motion was made by Mrs. Wiegel, seconded by Mr. Gerson, that the proposed ordinance be returned to the Common Council with a recommendation that it DO PASS subject to the following conditions:

1. Proper Access geometrics will be required, the extent of which shall be determined by the Traffic Engineer.

Following further discussion, Dr. Boswell stated the following condition should also be added.

2. Access be from Hoston Road to eliminate curb cut on Lake Avenue.

Mrs. Wiegel then amended her motion to include the above mentioned condition. Mr. Roser amended his second, and motion was duly carred.

For the reasons that a need has been shown for the Land Use Plan to be amended, the amendments will be in the best interest of and benefit to the area involved, and of and to the City, the amendments will not be detrimental to and conflict with the overall Master Plan of the City of Fort Wayne.

Before continuing with the following ordinance, Mr. Grinsfelder turned over the chair to Mr. Gerson, Vice President of the Commission.

g. Bill No. Z-73-06-14 - Establish a Shopping Center Symbol (B2) at the intersection of West Illinois Road and State Road # 14.

Following presentation of the Committee Report, motion was made by Mrs. Wiegel, seconded by Mr. Roser, that the proposed ordinance be returned to the Common Council with a recommendation that it DO NOT PASS.

Before motion was carried, Dr. Boswell stated that he felt this should be given further consideration and should not be turned down at this point.

Mr. Roser stated he was opposed to this petition as he felt there were too many shopping centers, and eventually they were going to be in the same situation with centers as they are now with service stations. He further stated he saw no need for any additional shopping centers in the particular area. For these reasons he was opposing this ordinance.

Ex. A

Dr. Boswell stated he would like to remind the Commission that when this petition was heard last Fall, the Commission had asked for a number of modifications, and these modifications have been met, the entire layout has been met, along with egress and ingress specifications.

Mr. Bonar pointed out that both the proponents and opponents agree that the area is not compatible for single family residential uses. He also stated, that by turning this down, it might possibly destroy an opportunity to seek out some use which would be mutually acceptable between the developer and the neighbors.

Mr. Gerson stated that the matter of shopping centers has been brought up repeatedly, along with the need of the communities, etc. He also stated that on occasions this factor may not be within the perimeters of the jurisdiction of this Planning Commission. He further stated they cannot dictate what businesses shall live and what businesses shall die. He also stated he would go along with Dr. Boswell and Mr. Bonar in deferring this matter for further study.

Following further discussion, a vote was taken for the motion made by Mrs. Wiegel, and seconded by Mr. Roser.

Motion was carried by a vote of five (5) ayes and four (4) nays.

For the reasons that no need has been shown for the Land Use Plan to be amended, the amendments will not be in the best interest of and benefit to the area involved, and of and to the City, the amendments will be detrimental to and conflict with the overall Master Plan of the City of Fort Wayne.

NEW BUSINESS:

I. Dalman Road - Baer Field Annexation

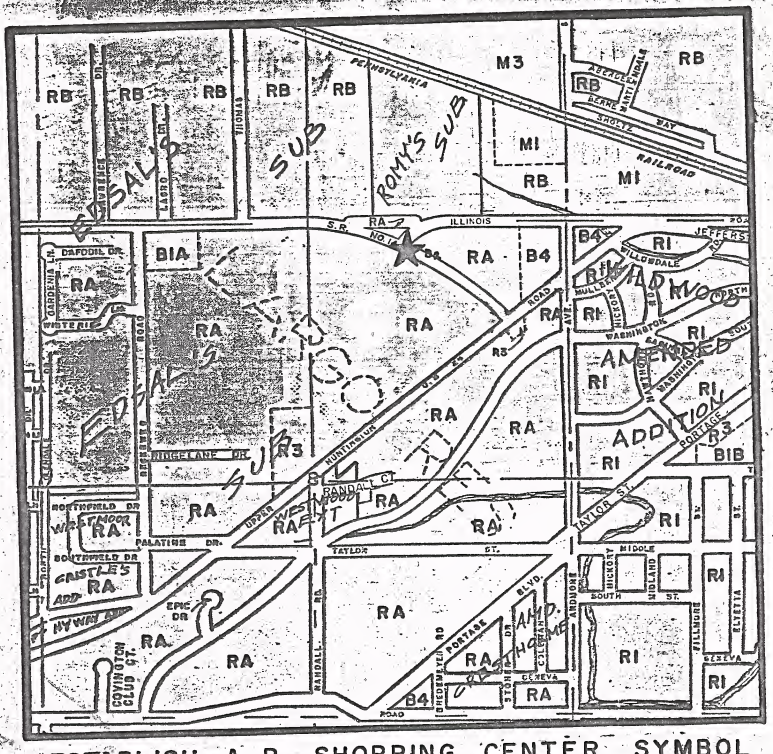
Mr. Grinsfelder asked if the reports were complete on the Baer Field Annexation. The Land Use Administrator replied the studies have not yet been completed, and have to be submitted to the Annexation Sub-Committee before being presented to Council. He also stated they were awaiting work from the state in regards to funds, and whether additional funds would be available for increased services.

Dr. Boswell motioned that the Baer Field Industrial Park Annexation be sent to Council with recommendation of DO PASS. Motion was seconded by Mr. Roser and duly carried.

ADJOURNMENT

With the conclusion of the business at hand, the meeting was adjourned.

Next meeting - SPECIAL PUBLIC HEARING - August 20, 1973



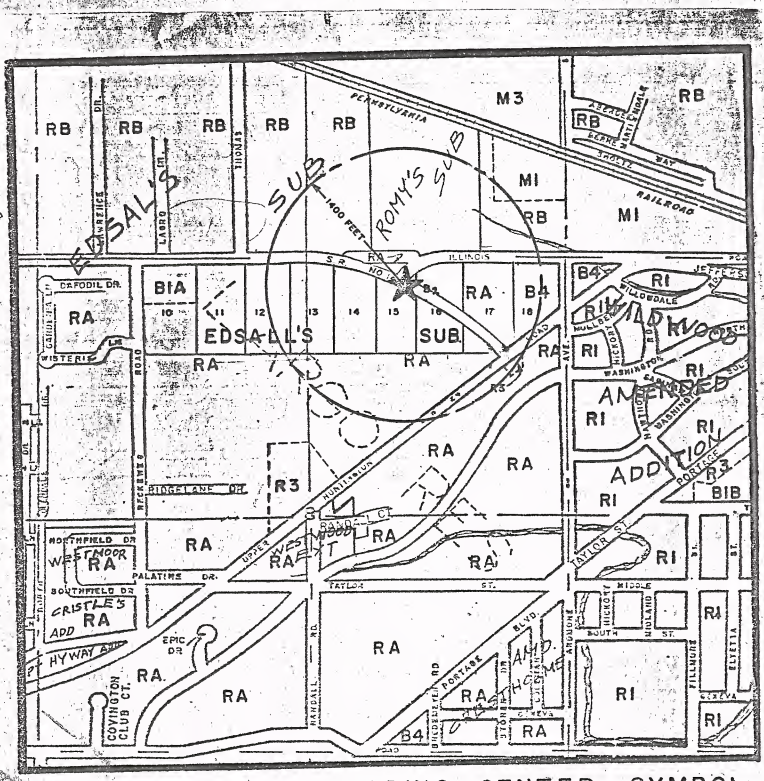
ESTABLISH A B_2 SHOPPING CENTER SYMBOL

Z-73-06-14

PAGE NO. FF1

DATE: 8-14-73

Ex B



ESTABLISH A B_2 SHOPPING CENTER SYMBOL.

PAGE NO. FF1 B 001

Exc

DATE: 8-15-73

PETITION FOR ZONING ORDINANCE AMENDMENT Receipt No. _____

TO: COMMON COUNCIL OF THE Date Filed _____

CITY OF FORT WAYNE, INDIANA Intended Use _____

I/We (1) JOHN D. REYNOLDS and ALYCE M. REYNOLDS, husband & wife - Owners
(Applicant's Name or Names)
do hereby petition your Honorable Body to amend the Zoning Map of Fort Wayne, Indiana, by reclassifying from a/an RA District to a/an Shopping Center District the property described as follows: Symbol "B2"*

(2) RAYMOND E. OVERLANDER and DONNA M. OVERLANDER, husband & wife - Owners

(3) H. DUANE BOBECK and FRED W. GARVER, tenants in common - Owners

(SEE ATTACHED EXHIBIT "A")

*Petitioners desire to establish a Shopping Center Symbol "B2" at the intersection of West Illinois Road and State Road 14, Fort Wayne, Allen County, Indiana.

(Legal Description)

(General Description for Planning Staff Use Only)

I/We, the undersigned, certify that I am/We are the owner(s) of fifty-one percentum (51%) or more of the property described in this petition.

John D. Reynolds	703 Nordale Dr.	John D. Reynolds
Alyce M. Reynolds	703 Nordale Dr.	Alyce M Reynolds
Raymond E. Overlander	Rt 1 Box 164F Roanoke Ind. 46783	Raymond E Overlander
Donna M. Overlander	" " " "	Donna M. Overlander
H. Duane Bobeck	2412 FORT WAYNE BANK BLDG	H. Duane Bobeck
(Name)	(Address)	(Signature)
Fred W. Garver	2412 Fort Wayne Bank Bldg	Fred W. Garver

Legal Description Checked By: _____
(City Engineer)

NOTE FOLLOWING RULES:

All requests for continuances or requests that ordinances be taken under advisement shall be filed in writing in the Office of the City Plan Commission by noon on the Wednesday preceding the meeting of the City Plan Commission at which the ordinance is to be considered. If the request for a continuance or advisement is filed within the required time, the matter will not be put on the agenda for that meeting. It shall be the obligation of the petitioner to notify the same property owners which the Plan Commission had notified by mail that the hearing has been postponed or rescheduled and inform them of the time and place of the meeting at which the ordinance will be considered. All withdrawals of ordinances must be made in writing prior to the Plan Commission's vote on the ordinance.

Name and address of preparer, attorney or agent:

Marvin S. Crell (Name) 814 Anthony Wayne Bank Building, Fort Wayne, Ind. (Address) 422-8408 (Telephone Number)

City Plan Commission, City-County Building, Room 800, One Main Street, Fort Wayne, Indiana 46802 Telephone Number 423-7571

Ex D

EXHIBIT "A"

(1) Lot Number 13 in Edsall's Subdivision of LaGro Reserve in Township 30 North of Range 12 East, as per plat recorded in deed record 30, page 160 in the office of the Recorder of Allen County, Indiana, excepting therefrom all legal roads and highways.

(2) Part of lot number 12 in Samuel Edsall's Subdivision in Lagro Reserve in Township 30 North, Range 12 East, Allen County, Indiana, as recorded in Deed Record 30, pages 160 and 161 in the office of the Recorder, and more particularly described as follows; the West Half of lot numbered 12 in Edsall's Subdivision EXCEPTING therefrom the North 75 feet and EXCEPTING therefrom the North 366 feet of the West 120 feet; containing 3.82 acres of land, more or less, and being subject to an easement for roadway purposes over the West 25 feet of the North 366 feet remaining.

(3) The East 1/2 of Lot number 12 in Edsall's Subdivision of LaGro Reserve in Township 30 North, Range 12 East, except that part thereof conveyed for highway purposes.

TO: COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA

Date Filed August 15, 1973

Intended Use

I/We H. Duane Bobeck and Fred W. Garver, tenants in common - Owners
~~John D. Reynolds and Alyce M. Reynolds, husband & wife - Owners~~
~~Raymond E. Overland and Donna M. Overlander, husband & wife - Owners~~
(Applicant's Name or Names)
do hereby petition your Honorable Body to amend the Zoning Map of Fort Wayne, Indiana, by reclassifying from a(an) ~~RA~~ District to a(an) Shopping Center Symbol "B"* District the property described as follows:

(1) Lot Number 13 in Edsall's Subdivision of LaGro Reserve in Township 30 North of Range 12 East, ~~as per plat recorded in deed record 30, page 160 in the office of the Recorder of Allen County, Indiana, excepting therefrom all legal roads and highways.~~

(2) Part of lot number 12 in Samuel Edsall's Subdivision in LaGro Reserve in Township 30 North, Range 12 East, Allen County, Indiana, ~~as recorded in Deed Record 30, page 160 and 161 in the office~~ of the Recorder, and more particularly described as follows: the ~~West Half of lot numbered 12 in Edsall's Subdivision EXCEPTING~~ therefrom the North 75 feet and EXCEPTING therefrom the North ~~366 feet of the west 120 feet, containing 3.82 acres of land,~~ more or less, and being subject to an easement for roadway purposes over the West 25 feet of the North 366 feet remaining.

(3) The East 1/2 of Lot number 12 in Edsall's Subdivision of LaGro ~~Reserve in Township 30 North, Range 12 East, except that part~~ thereof conveyed for highway purposes.

(Legal Description)

*PETITIONERS DESIRE TO ESTABLISH A SHOPPING CENTER SYMBOL "B2" AT THE INTERSECTION OF WEST ILLINOIS ROAD AND STATE ROAD 14, FORT WAYNE, ALLEN COUNTY, INDIANA.

(General Description for Planning Staff Use Only)

I/We, the undersigned, certify that I am/We are the owner(s) of fifty-one percentum (51%) or more of the property described in this petition.

H. Duane Bobeck	2412 Fort Wayne Bank Bldg. Fort Wayne, Indiana	H Duane Bobeck
Fred W. Garver	2412 Fort Wayne Bank Bldg. Fort Wayne, Indiana	Fred W Garver
John D. Reynolds	703 Nordale Drive Fort Wayne, Indiana	John D Reynolds
Alyce M. Reynolds	703 Nordale Drive Fort Wayne, Indiana	Alyce M. Reynolds
Raymond E. Overland	R.1, Box 169F, Roanoke	Raymond E. Overland
Donna M. Overlander	R.1, Box 169F, Roanoke	Donna M Overlander

Legal Description Checked By:

(City Engineer)

NOTE FOLLOWING RULES:

All requests for continuances or requests that ordinances be taken under advisement shall be filed in writing in the Office of the City Plan Commission by noon on the Wednesday preceding the meeting of the City Plan Commission at which the ordinance is to be considered. If the request for a continuance or advisement is filed within the required time, the matter will not be put on the agenda for that meeting. It shall be the obligation of the petitioner to notify the same property owners which the Plan Commission had notified by mail that the hearing has been postponed or rescheduled and inform them of the time and place of the meeting at which the ordinance will be considered. All withdrawals of ordinances must be made in writing prior to the Plan Commission's vote on the ordinance.

Name and address of preparer, attorney or agent:

H. Duane Bobeck	2412 Fort Wayne Bank Bldg. Fort Wayne, Indiana	219 422-7444
(Name)	*(Address)*	*(Telephone Number)*

City Plan Commission, City-County Building, Room 800, One Main Street, Fort Wayne, Indiana 46802 *Telephone Number 423-7571*

Ex E

THE CITY OF FORT WAYNE
344 utility building
fort wayne, indiana 46802

October 30, 1973

RECEIVED
NOV 1 1973
FORT WAYNE CITY
PLAN COMMISSION

Plan Commission
City of Fort Wayne
City-County Building
Fort Wayne, Indiana

Attention: Richard S. Wanush
Senior Planner

Re: Shopping Center Symbol
S. R. #14 and Illinois Road

Gentlemen:

Pursuant to your request for a legal opinion regarding filing of rezoning petitions on the same site within one year of the original petition, the following opinion is submitted for your consideration.

The controlling statute reads as follows:

> In the event the report of the plan commission is adverse to a proposed ordinance referred to it, the ordinance shall not be passed except by an affirmative vote of at least seventy-five per centum (75%) of the members of the city council or a unanimous affirmative vote of the board of county commissioners.
>
> Failure of the city council or the board of county commissioners to pass such proposed ordinance by said affirmative vote within ninety (90) days after its rejection by the plan commission shall constitute rejection of the proposed ordinance and it shall not be reconsidered by the planning commission, city council or county commissioners until the expiration of one (1) year after the date of its original rejection by the plan commission. (Emphasis added) Burns' Stat. §53-765 (IC 18-7-5-67)

The last paragraph of the statute was not part of the original planning and zoning statute of 1947, but was added in 1961. This was done obviously to eliminate repeated filings of the same or substantially the same ordinance in order to wear down the opposition and to force rezoning petitioners to give serious consideration to their petitions before filing them in the first instance. In addition, there being no other restraints on rezoning petitions, it would appear the amendment was adopted to promote greater zoning stability.

There are no cases in the Indiana appellate courts which have ruled on the precise issue which you raise. Consequently, this opinion will be a construction of the statute based on the ordinary and usual meaning of the words of the statute in the context of the intent of the legislature as set out in the preceeding paragraph.

We have emphasized the controlling words of the statute above and would cite them here again for understanding.

> Failure of the city council . . . to pass such proposed ordinance . . . shall constitute rejection of the proposed ordinance . . . and it shall not be reconsidered . . . until expiration of one (1) year after the date of its original rejection by the plan commission.

The key words are "shall constitute rejection of the proposed ordinance" and "date of its original rejection by the plan commission". The clear meaning of the statute from these words is that once the plan commission rejects or recommends "Do Not Pass" on a proposed ordinance, the only way the ordinance can be saved is to have the council pass it by the required 75% vote within ninety (90) days from the plan commission's rejection. If the council takes no action within the specified time for whatever reason, withdrawal of the petition and ordinance or failure to act, this will be an automatic rejection of the ordinance and no refiling of the same or a substantially similar ordinance can be reconsidered by the planning commission or city council for the one year period. There is no bar to refiling within the year, but no action can be taken until the year expires.

The final point is that once the plan commission has rejected the ordinance the ninety (90) day period for council action begins to run and a withdrawal of the petition at that time would be ineffective to stop this period of time from running and if no action is taken by the council in this period of time the one (1) year reconsideration bar goes into effect.

This opinion on procedure is reflected in our current rezoning petition form which states on its face that petitions which are to be withdrawn must be removed from consideration before the commission votes on the ordinance.

Sincerely,

Ralph R. Blume
Associate City Attorney

RRB/mdr

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE THE CITY PLAN COMMISSION
CITY OF FORT WAYNE

IN RE THE MATTER OF BILL)
NO. Z-73-09-10 TO ESTABLISH)
A SHOPPING CENTER SYMBOL (B-2))
AT THE INTERSECTION OF WEST)
ILLINOIS ROAD AND STATE ROAD)
14)

Comes now Jack W. Lawson, Attorney at Law, and appears for remonstrators, Stanley and Claudia Levine, Thomas N. Beadie, Mr. and Mrs. Edward Downing, et al., and on behalf of that class of persons so similarly situated and adversely affected by the above-proposed rezoning petition for the ordinance to establish said shopping center symbol, and files the attached brief on behalf of said remonstrators.

DUNTEN, BECKMAN, WYNEKEN, LAWSON
& FRUECHTENICHT

BY: _____
(Jack W. Lawson)
2410 Fort Wayne Bank Building
Fort Wayne, Indiana 46802
Phone: 423-1602

FORT WAYNE, IND.
FILED
DEC 11 1973
CHARLES W. WESTERMAN
CITY CLERK

FORT WAYNE, IND.
RECEIVED
DEC 11 1973
CHARLES W. WESTERMAN
CITY CLERK

I. AMENDMENT OF A ZONING ORDINANCE REQUIRES NO AFFIRMATIVE ACTION BY THE PLAN COMMISSION, ONLY A "REPORT" TO CITY COUNCIL. THE FINAL BINDING DECISION MUST BE MADE BY THE CITY COUNCIL.

It has long been the law in Indiana that an "Advisory Report" made by a Plan Commission is not a decision. Recommendations of the Plan Commission cannot be appealed to a Court of Law and are not binding until acted upon by City Council. The only decisions of a Plan Commission which are binding on anyone are those which deal with procedural matters, such as refusal to consider a petition to rezone. Acts of recommendation or disapproval made without the concurrence of City Council are not binding.

Having this construction in mind, the recommendation made July 23, 1973, concerning Bill No. Z-73-06-14 did not have to be binding. In fact, regardless what the Plan Commission would have done, its act could never have been binding on anyone. This is precisely why the language of Burns Ind. Stats. Anno. §53-765 refers only to the "report" of the Plan Commission. Burns Ind. Stats. Anno. §53-763 thru 765 set forth the duties of the Plan Commission when petitions to rezone are submitted. The Plan Commission is not to decide whether or not the petition shall be granted. Only City Council can do that. The Plan Commission merely files a "report" with City Council. That report does not bind anyone. If the legislature had intended the report to be binding, it would have been called a decision and a method of appealing from a decision would have been provided.

To further reinforce this construction, Case Law has stated amendments to the Master Zoning Plan are made as the result of a preliminary investigation and final adoption by City Council.

The report of the Plan Commission is merely advisory and not binding or official until accepted by City Council. If Council chooses to reject the report of the Commission, that report has no efficacy whatsoever.

Since the reports of the Plan Commission are merely advisory and not binding, it makes no difference whether they are passed by a majority of the Commission or a majority of the quorum at any given meeting. The only action which requires passage by a majority of the Commission is that which is procedurally binding on petitioners or remonstrators in a particular petition.

II. SINCE IT IS NOT NECESSARY THAT THE REPORT OF THE PLAN COMMISSION TO CITY COUNCIL BE BINDING, THE RULE THAT A PROPOSED ORDINANCE MAY NOT BE WITHDRAWN AFTER A VOTE BY THE PLAN COMMISSION MUST BE INVOKED IN THIS PARTICULAR CASE.

The petition filed by Proponents Reynolds, et al., denoted as Bill No. Z-73-06-14 stated on its face, no ordinance could be withdrawn after the Plan Commission had voted on it. Proponents are now estopped from contending that rule does not apply in this particular instance. On July 23, a vote was taken on Bill No. Z-73-06-14. On August 14, 1973, an attempt was made to withdraw that bill. That attempt clearly contravened the rule of City Council and must be considered a nullity. The proposed ordinance had been sent to City Council and could not be withdrawn.

The rule above discussed, does not refer to an official or binding vote by the Plan Commission; it merely refers to a "vote". It is quite obvious that the purpose of the rule is to prevent a developer from "wearing down" remonstrators by keeping alive a petition rejected by the Plan Commission. If a vote by a "majority" of the entire Commission is required, a developer could keep a closely contested matter alive for years, especially in light of the fact that since the July 23, 1973, meeting of the

Plan Commission, there have never been more than nine members present.

The conditions necessary to put this rule into effect exist in this matter. A "vote" was made by the Plan Commission. After this occurrence, the petition cannot be withdrawn.

III. THE VOTE OF JULY 23, 1973, REJECTING BILL NO. Z-73-06-14 WAS RATIFIED BY THE ENTIRE COMMISSION BY AFFIRMANCE OF THE MINUTES OF THE JULY 23 MEETING AND BY ITS ACTION SENDING ITS DECISION TO CITY COUNCIL.

On August 27, 1973, the Plan Commission "duly approved" the minutes of the July 23, 1973, meeting. At the August meeting eight members were present and no objections to the minutes were made. Approval of all eight members was thereby given to the action taken at the July 23 meeting. Such approval thereby ratifies and makes binding all action taken at the July 23 meeting, including the rejection of Bill No. Z-73-06-14.

Even if approval of the minutes is found not to be ratification of the July 23 meeting, the fact that all members present at the July 23 meeting directed the Secretary to send this decision to City Council makes the rejection of Bill No. Z-73-06-14 official action of the Commission.

Attached hereto, made a part hereof and marked Exhibit "A" is a letter from the Secretary of the Plan Commission to City Council. The letter clearly indicates the Commission required the letter to be sent. The letter gives clear indication of the Commission's recommendation on Bill No. Z-73-06-14.

The action rejecting Z-73-06-14 and the action requiring the Secretary to send notice of the recommendation to City Council must be considered separate acts. Although the vote rejecting Bill No. Z-73-06-14 was 5 - 4, there were ten members present. The minutes of the July 23 meeting indicate there were no objections made to the Secretary sending the rejection on to City Council as the Commission's recommendation. Since no

objections were made, the action of the Secretary was affirmed 10 - 0 and the rejection of Z-73-06-14 became official and binding on the Commission.

Having ratified the action taken at the July 23 meeting in both the above ways, the Commission is now estopped from denying the binding nature of its own acts.

CONCLUSION

Since the report made by the Plan Commission to City Council is binding on no one, the concurrence by a majority of the Commission in that report is not necessary to make it official. Even if a majority is required, the action taken in the July 23 meeting was ratified both by the adoption of the minutes of the meeting and the resolution by ten members of the Commission requiring the Secretary to forward the report to City Council as the Official Plan Commission Report. Once the "vote" of the Plan Commission had been made, the petition could not be withdrawn from City Council.

DUNTEN, BECKMAN, WYNEKEN, LAWSON
& FRUECHTENICHT

BY: _____
(Jack W. Lawson)

THE CITY OF FORT WAYNE

office of city plan commission

July 25, 1973

COMMUNICATIONS FROM CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, Indiana 46802

Gentlemen and Mrs. Schmidt:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance Number 2836, amending Chapter 36 of the Municipal Code of the City of Fort Wayne, Indiana, 1946). The proposed ordinance is designated as:

Bill No. Z-73-06-14

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
25th day of July, 1973.

Gretchen Wiegel

Gretchen Wiegel
Secretary

Exhibit A

Page 1

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on June 12, 1973, referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-73-06-14; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on July 16, 1973;

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that such proposed ordinance DO NOT PASS for the reasons that no need has been shown for the Land Use Plan to be amended, the amendment will not be in the best interest of and benefit to the area involved and of and to the City, and the amendment will be detrimental to and conflicts with the overall City Plan; and,

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held July 23, 1973.

Certified and signed this 25th day of July, 1973.

Gretchen Wiegel

Gretchen Wiegel
Secretary

Exhibit A

Page 2

CITY PLAN COMMISSION
City-County Building
One Main Street
Fort Wayne, Indiana

July 25, 1973

Members of the Common Council
City-County Building
One Main Street
Fort Wayne, Indiana 46802

Gentlemen and Mrs. Schmidt:

Attached hereto is a copy of a resolution pertaining to one (1) zoning ordinance amendment acted upon by the City Plan Commission at their regular meeting held July 23, 1973. In addition to the reasons outlined in the resolution, the following are additional remarks pertaining to the ordinance involved:

1. Bill No. Z-73-06-14

   a. Intended Use: Establish a "B2" Shopping Center Symbol.

   b. Plan Commission Recommendation: DO NOT PASS

   This ordinance received a DO NOT PASS recommendation for the following reasons:

   (1) Within two (2) miles of the petitioned change, there are four (4) approved shopping centers, two (2) regional and two (2) neighborhood.

   (2) The present urbanized area is adequately served by a variety of commercial uses that will serve their shopping needs.

   (3) The substantial increase in traffic generation from this proposed center would cause a demand on existing traffic corridors that they are now not capable of handling due to lack of adequate channelization.

   (4) Recommend that Commission and Staff give recommendations on future use of land as this is a substantial piece of vacant property. Given all problems of traffic and land use we shall direct our efforts to arrive at a compatible land use.

If there are any questions with regard to this ordinance, please feel free to call on us.

Respectfully submitted,

CITY PLAN COMMISSION

Richard Wanush (PR)

Richard S. Wanush
Senior Planner

RSW:pr
Att.

cc: Mayor Ivan Lebamoff

REMONSTRANCE AND PETITION FILED ON BEHALF OF SPECIFICALLY NAMED REMONSTRATORS AND ALL THOSE IN A CLASS SO SIMILARLY SITUATED AS THESE REMONSTRATORS

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE THE CITY PLAN COMMISSION
CITY OF FORT WAYNE

IN RE THE MATTER OF BILL)
#Z-73-07-10 TO ESTABLISH)
A SHOPPING CENTER SYMBOL)
(B-2) AT THE INTERSECTION)
OF WEST ILLINOIS ROAD AND)
STATE ROAD 14)

I

Comes now Jack W. Lawson, attorney for remonstrators, Stanley and Clauda Levine, et al., and on behalf of that class of persons so similarly situated and adversely affected by the above proposed rezoning petition for the ordinance to establish said shopping center symbol. Reasons for opposition are but not limited to:

1. Petitioners cannot establish the need for the master plan to be amended.

2. An existing "B-2" symbol is already established with 1,400 feet of the proposed symbol to be established by the above amendment, and the establishment of another symbol would be contrary to the proposed substance and spirit of the ordinance providing for "B-2" shopping center symbols.

3. The amendment will not be in the best interest of and benefit to the residential and commercial areas involved that presently exist nor will the amendment be in the best interest of and benefit the City of Fort Wayne, its residents or its development pattern.

4. The proposed amendment will be detrimental to and conflict with the overall City Master Plan.

5. There is no present or future facilities to handle the traffic congestion that will be created by a regional shopping center development that could be developed if said ordinance is

FORT WAYNE, IND. FILED DEC 11 1973 CHARLES W. WESTERMAN CITY CLERK

FORT WAYNE, IND. RECEIVED DEC 11 1973 CHARLES W. WESTERMAN CITY CLERK

approved.

6. The establishment of a shopping center symbol that would provide for a regional type center in such close proximity to the central business district to the City of Fort Wayne would be detrimental to the commercial redevelopment of said central downtown areas.

7. There already exists sufficient shopping center sites and existing active shopping center developments to fit any long-range or foreseeable needs of the area to be served.

II

Remonstrators further submit that the only matter to be presently considered before this Plan Commission is the issue of "Pass" or "Do Not Pass" for a "B-2" shopping center symbol. No notice has been given with regard to a hearing for a plan of development and any consideration of such a plan of development would be contrary to the ordinance. Section 14F 2(b) requires:

> "Upon receipt of such application and preliminary development plan, the Commission shall review the same and set the same for public hearing. Notice of the hearing shall be the same notice as is required under the laws of the State of Indiana for the adoption of a Master Plan or Amendments thereto under the planning acts of the State of Indiana."

These remonstrators do not consent to a hearing on July 16, 1973, to be a hearing on any development plan or plans.

WHEREFORE, Remonstrators respectfully request that the Plan Commission of the City of Fort Wayne recommend a "Do Not Pass" for the establishment of a shopping center symbol as requested by the petitioners.

(Jack W. Lawson, Attorney for Remonstrators)

RESTATEMENT OF POLICY

Because of the many zoning map amendments that are being submitted, the Commission deems it necessary to restate its policy concerning these amendments.

The Plan Commission approached the preparation of the Land Use Plan and the Zoning Ordinance in a positive manner and spent many months in a very thorough detailed analysis of all the factors which go to make up the Plan. During and following the preparation of the Plan, many public hearings and meetings were held in each section of the city and of the fringe area. Many suggestions and requests were received and changes made before the Plan was adopted by the Common Council in its final form.

The Land Use Plan serves as an important basic plan for the development of the community and is an essential guide for the preparation of other plans of the city because the type of land use and the density of population determine the potential demand for city utilities and services.

It is recognized that no plan for a constantly changing city can be rigid or inflexible. Rather it must be kept up-to-date, reviewed periodically and changed from time to time. In considering any proposed change, it is the responsibility of the petitioner to show:

1. The need for the plan to be amended,

2. That the amendment will be in the best interest of and benefit to the area involved and of and to the city,

3. That the amendment will not be detrimental to and does not conflict with the overall city plan.

Approved 12/10/56

SUPPLEMENT TO RESTATEMENT OF POLICY

1. The need for the plan to be amended.

   (a) Logical extension of an existing district.

   (b) Need for additional district to serve the area.

   (c) Changing conditions within the area which make the present land use classification impractical.

2. That the amendment will be in the best interest of and benefit to the area involved and of and to the city.

3. That the amendment will not be detrimental to and does not conflict with the overall city plan.

   The Development Plan includes plans for:

   (1) Thoroughfare Plan (traffic)

   (2) Water Transmission and Distribution

   (3) Sewers (storm and sanitary)

   (4) Fire Station Site Plan

   (5) School Site Plan

   (6) Park Site Plan

   (7) Shopping Center Site Plan

   (8) Industrial Site Plan

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE THE FORT WAYNE CITY COUNCIL

IN RE THE MATTER OF BILL NO. Z-73-09-10)
TO ESTABLISH A SHOPPING CENTER SYMBOL)
(B-2) AT THE INTERSECTION OF WEST ILLINOIS)
ROAD AND STATE ROAD 14)

OPINION OF COUNSEL

As legal counsel for the Common Council of the City of Fort Wayne I have considered briefs presented by Remonstrators and Petitioners and have researched the statutory law and independently investigated the minutes of the Fort Wayne City Plan Commission meeting of November 19, 1973 and November 26, 1973. This opinion deals entirely with the law as to whether or not Bill No. Z-73-09-10 is properly before the Common Council for action at this time.

1. THERE HAS BEEN A PROPER WITHDRAWAL BY PETITIONERS OF THEIR PETITION. Said withdrawal by petitioners was addressed to the Fort Wayne City Council on Bill No. Z-73-06-14 and not to the City Plan Commission. The Common Council Committee on Regulations concurred that said Bill Z-73-06-14 be withdrawn. There is no question but what this effectively withdrew this Bill.

2. THE CITY PLAN COMMISSION PROPERLY CONSIDERED AND PASSED ITS RECOMMENDATION THAT BILL 73-09-10 "DO PASS".

At the November 19, 1973 public hearing on Bill 73-09-10 there was no withdrawal by Chairman Grinsfelder as being interested in a financial sense. [redacted] Mr. Grinsfelder merely abstained from voting and by virtue of his presence and participation a quorum existed at that hearing.

3. THE VOTE OF THE PLAN COMMISSION ON NOVEMBER 26, 1973 was VALID.

Ten (10) regular members of the Plan Commission were present along with Mr. Hinga who was present by virtue of a proxy. Mr. Gransfelder again was properly present and simply reported his intent to abstain from voting for the reasons he had previously given. He never statutorily disqualified himself as having a financial interest. There were ten (10) regular members of the Commission present at this executive meeting. This constituted a quorum regardless of whether the proxy of Mr. Hinga was proper or improper. The vote taken on November 19, 1973 on the Bill was seven (7) in favor of the proposed Bill, and three (3) opposed. Mr. Hinga voted in favor of the proposed Bill. Invalidation of Mr. Hinga's vote would still leave six (6) votes in favor of the proposed Bill and three (3) in opposition. Therefore the Plan Commission properly voted that the Bill "do pass" and it is that recommendation which is before the Common Council for action at this time.

Respectfully submitted,

John H. Logan

John H. Logan, Attorney for Common Council of the City of Fort Wayne.

DATED: January 14, 1974

3838 North Washington Rd.
Fort Wayne, Indiana 46804
February 1, 1974

The City of Fort Wayne
Office of City Plan Commission
City-County Building
One Main Street
Fort Wayne, Indiana 46802

Dear Members:

This note is being sent to reaffirm my opposition to the establishment of another shopping center symbol in the vicinity of S.R. 14 and West Illinois Road.

There seems to be more than enough stores open or being constructed to handle the needs of the immediate neighborhoods.

A person wonders if with the genuine energy crisis present, and dimmer prospects for energy the next few years, the advisability of decreasing total city power by the addition of new centers. The citizens will be asked to drop their thermostats again and use other measures to conserve energy. Is this really fair?

Is the symbol really progress or just another change?

Very truly yours,

Betty D. Lloyd
(Mrs. Robert P. Lloyd)

Admn. Appr. ✓

Number assigned by Dave Keller's Office - # 3222

DIGEST SHEET

3-73-02-10

TITLE OF ORDINANCE Zoning Map Amendment Ordinance

DEPARTMENT REQUESTING ORDINANCE City Plan Commission

SYNOPSIS OF ORDINANCE Preparation of a Zoning Map Amendment Ordinance

Petition initiated by property owners to rezone property located as follows: Establish A "B2" Shopping Center Symbol at the intersection of Illinois Road and State Road # 14

EFFECT OF PASSAGE Would permit shopping center

EFFECT OF NON-PASSAGE Property would remain as is.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) none

ASSIGNED TO COMMITTEE (J.N.) PBG LOCM